

**Letter of Findings Number: 02-20140621**  
**Income Tax**  
**For Tax Years 2011 and 2012**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### **HOLDING**

Retail business did not prove that the Department's calculations of income tax were incorrect. Therefore, the Department's proposed assessments were proper.

### **ISSUE**

#### **I. Income Tax—Carry Through Income.**

**Authority:** IC § 6-8.1-5-1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-8](#).

Taxpayer protests proposed assessments for additional income tax that flowed from the business to the individual owners.

#### **II. Tax Administration—Penalties and Interest.**

**Authority:** IC § 6-8.1-10-2.1; IC § 6-8.1-10-1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of penalties and interest.

### **STATEMENT OF FACTS**

Taxpayer is a retail business that operates a gas station and convenience store. As the result of a sales and use tax audit, the Indiana Department of Revenue ("Department") issued proposed assessments for the tax years 2011, 2012, and 2013. The business was a partnership for 2011 and an S-corporation for 2012, thus the additional taxable income resulted in a proposed assessment for income tax which flowed to the business owners. The protests of the individual owners are addressed in separate Letters of Findings. The years at issue for income tax are 2011 and 2012. Taxpayer protested, and an administrative hearing was held and this Letter of Findings results. Further facts will be supplied as needed.

#### **I. Income Tax—Carry Through Income.**

### **DISCUSSION**

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Taxpayer's retail business was audited by the Department for sales and use tax and for income tax. Among that audit's conclusions were that "the taxpayer had not reported all convenience store sales for income tax," and pursuant to [45 IAC 3.1-1-8](#) "an adjustment [was] made to include the additional convenience store sales." Taxpayer was a partnership and then elected to file as an S corporation, so the "income flows through to the individual tax returns" of the business owners.

In a separate Letter of Findings, the Department denied Taxpayer's protest of the proposed assessments for sales and use tax. The audit adjustment "has no tax effect for the taxpayer as the income from a Partnership and from a Sub Chapter S Corporation flows to the shareholders who pay any tax due on the income." Since Taxpayer's protest in the instant case is dependent on the outcome of Taxpayer's separate protest of the calculations of additional sales, and since Taxpayer's sales tax protest was denied (See Letter of Findings 04-20140623), Taxpayer's protest in this case is also denied. The Department does note that in that separate Letter of Findings, the Legal Division requested that the Audit Division review Taxpayer's statement that two calculation errors occurred and make any adjustments if warranted; if any adjustments are made then the impact of those adjustments will flow through to the individual owner. Otherwise, Taxpayer has not met the burden of proving the proposed assessments for income tax incorrect, as required by IC § 6-8.1-5-1(c).

## **II. Tax Administration—Penalties and Interest.**

### **DISCUSSION**

Taxpayer protests the imposition of penalties pursuant to IC § 6-8.1-10-2.1. Interest is imposed pursuant to IC § 6-8.1-10-1, and the Department notes that waiver of interest is not permitted under IC § 6-8.1-10-1(e). Penalty waiver is permitted if the taxpayers show that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

As explained in Letter of Findings 04-20140623, Taxpayer failed to keep records as required under IC § 6-8.1-5-4(a). That failure, along with the Department's audit conclusion that Taxpayer owed additional tax, directly led to the imposition of the income tax assessments, which flowed through to the individuals, at issue in this protest. Taxpayer has not affirmatively established that it exercised ordinary business care in this case. Therefore, waiver of penalties is not warranted under [45 IAC 15-11-2](#)(c).

### **FINDING**

Taxpayer's protest of the imposition of penalties and interest is denied.

### **SUMMARY**

Taxpayer's Issue I protest regarding the imposition of adjusted gross income tax, which flows through to the individual owners, is denied. Taxpayer's Issue II protest regarding the imposition of penalties and interest is also denied.

*Posted: 02/24/2016 by Legislative Services Agency*  
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